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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,583	12/05/2003	James M. Kleinert	ZM337/03002	8971
22884	7590	07/02/2004	EXAMINER	
MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202			WELCH, GARY L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/728,583	KLEINERT, JAMES M.	
	Examiner	Art Unit	
	Gary L. Welch	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10052003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-5 and 10-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims require an expandable dorsal side section. The drawings and specification refer to this element as reference number 130. However, the specification and the drawings do not adequately disclose what this element is structurally. Is the expandable dorsal side section an opening free of material or is it an elastic type material. Since there is no disclosure that adequately describes what the structure of the expandable dorsal side section, the specification is not enabling.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5 and 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claims are rejected as discussed in the above 35 U.S.C. 112, first paragraph rejection. The examiner cannot determine what the structural element is with regard to the expandable dorsal side section.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 5, 6, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bevier et al. (U.S. 6,681,402).

Bevier et al. discloses a ball glove having a dorsal side panel and a palmar side panel that are secured to each other along each panel's outer periphery that defines the glove body. The dorsal side panel is sized to cover a back of a hand and the palmar side panel is sized to cover the palm of the hand. The dorsal side panel and the palmar side panel provide a thumb stall and a plurality of finger stalls therebetween with an opening to receive a human hand therein. The dorsal side panel has an expandable side section located between the thumb stall and the index finger stall and extends beyond the carpometacarpal joint of the thumb in a longitudinal direction to a location approximating the center axis of rotation of the metacarpalphalangeal joint of the finger stalls to receive the index

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finger therein and transverse thereto across the metacarpalphalangeal joints of the location of the finger stalls to receive the index finger of the human hand. A webbing is disposed between the thumb stall and index finger stall. The webbing has an outer periphery attached to at least one of the dorsal side panel or palmar side panel (Figures 1-3).

With regard to claim 5, the expandable dorsal side section extends across the metacarpalphalangeal joints of the fingerstalls to receive the long, ring and small fingers of a human hand.

With regard to claims 6, 10 and 11, the invention is disclosed above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bevier et al. (U.S. 6,681,402) in view of Brown (U.S. 6,182,289).

Bevier et al. discloses the invention substantially as claimed above.

However, Bevier et al. does not disclose that the webbing includes a thumb side web section and an index side web section where the thumb side web section is attached along the periphery of the thumb stall and a longitudinally extending hinge member and the index finger side web section is attached along the outer

periphery of the index finger stall and an opposed side of the index finger side web section is attached to the longitudinally extending hinge member.

Brown teaches a ball glove having a webbing 32 positioned between the index finger stall and the thumb stall of the glove. A hinge 38 is provided in the webbing for reducing the amount of force required to be exerted by the user for closing and flexing the glove.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a hinge as taught by Brown to the webbing of Bevier et al. in order to reduce the amount of force required to be exerted by the user for closing and flexing the glove thereby making it easier for the user to catch and retain a ball therein.

With regard to claims 3 and 8, the hinge member 38 is closer to the index finger stall than to the thumb stall.

With regard to claims 4 and 9, neither Bevier et al. nor Brown disclose the claimed limitations. However, a review of the applicant's specification does not reveal any criticality of the claimed limitations (i.e., why these values are better than any other values). Therefore, it would have been obvious through routine experimentation to position the hinge approximately 1.5 to 3.0 times the distance between the index finger stall and the center of the hinge for providing a predetermined level of flexibility in the webbing thereby affording various users of varying skill level the flexibility required in catching and retaining a ball.

With regard to claim 7, the invention is disclosed above.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hackett et al. '394, Baumann '471, Aoki '470 and '460, Shane '008, Khazzam '287, Kobos '929 and Rainey '080 disclose various ball gloves pertinent to the applicants invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (703) 305-0451. The examiner can normally be reached on Mon-Fri 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary L. Welch
Primary Examiner
Art Unit 3765

glw